

File No. 101357

Committee Item No. 6

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: November 3, 2010

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

(Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Victor Young

Date: October 29, 2010

Completed by: Victor Young

Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.



1 [Settlement of Unlitigated Claims - Skyline Stables Corporation - \$650,000]

2 **Resolution approving the settlement of the unlitigated claims by and between Skyline**  
3 **Stables Corporation (Skyline) and City and County of San Francisco, related to the**  
4 **lease between Skyline and the San Francisco Public Utilities Commission (SFPUC) of a**  
5 **portion of the SFPUC Harry Tracy Water Treatment Plant (HTWTP) site in San Mateo**  
6 **County, the SFPUC approval of the HTWTP Long Term Improvement Project to improve**  
7 **water service reliability and seismic stability of the HTWTP, the SFPUC termination of**  
8 **Skyline's lease and Skyline's vacation of the lease premises, and SFPUC's offer to**  
9 **acquire the leasehold interest, calling for SFPUC to pay \$650,000 to Skyline, and**  
10 **including other material terms and conditions in a settlement and release agreement.**  
11

12  
13 WHEREAS, Disputes arose between Skyline Stables Corporation (Skyline) and the  
14 City and County of San Francisco, related to Skyline's lease of a portion of the San Francisco  
15 Public Utilities Commission (SFPUC) Harry Tracy Water Treatment Plant (HTWTP) site, dated  
16 November 15, 2005 (Lease); the SFPUC approval, on October 15, 2010, of the HTWTP Long  
17 Term Improvement Project to improve water service reliability and seismic stability of the  
18 HTWTP; the SFPUC notice to terminate the Lease requiring Skyline to vacate the Lease  
19 premises on or before November 30, 2010; and the SFPUC offer to acquire the leasehold  
20 interest (Disputes). Skyline and the SFPUC have executed a settlement and release  
21 agreement recommended by the City Attorney to resolve the Disputes (Agreement), on file  
22 with the Board of Supervisors in File No. 101357, subject to this Board's approval; and

23 WHEREAS, The Agreement requires the SFPUC to pay \$650,000 to Skyline, and  
24 includes other material terms, including but not limited to: (1) SFPUC forgiveness of rent due  
25 under the Lease for October and November 2010, and the termination of the Lease consistent

1 with the SFPUC Lease termination notice to Skyline dated October 15, 2010, and (2) releases  
2 of claims related to the Disputes; and

3 WHEREAS, The Agreement is subject to certain conditions precedent to effectiveness,  
4 including but not limited to: (1) this Board's review and approval of a proposed Resolution  
5 adopting findings under the California Environmental Quality Act (CEQA), including the  
6 adoption of a mitigation monitoring and reporting program and a statement of overriding  
7 considerations related to the HTWTP Long-Term Improvements Project No. CUW36701, part  
8 of the Water System Improvement Program, and directing the Clerk of the Board of  
9 Supervisors to notify the Controller if the Resolution is approved, which Resolution is on file  
10 with the Board of Supervisors in File No. 101301, (2) the Board Budget and Finance  
11 Committee approval of a release of the reserve on the appropriation for the HTWTP Project  
12 established in Ordinance No. 092-10, (3) the Controller's certification of funds available for the  
13 HTWTP Project, including the payment to Skyline under the Agreement, and (4) Skyline's  
14 vacation of the lease premises by November 30, 2010, or such later date that the SFPUC  
15 General Manager determines at his sole discretion is consistent with the HTWTP Project  
16 schedule; now, therefore, be it

17 RESOLVED, That pursuant to Section 10.22 and 10.24 of the San Francisco  
18 Administrative Code, settlement and compromise of said unlitigated Disputes by and between  
19 the SFPUC and Skyline, including the SFPUC's payment to Skyline of \$650,000, is hereby  
20 approved, subject to the terms and conditions in the Settlement and Release Agreement  
21 between the SFPUC and Skyline, dated October 25, 2010, on file with the Board of  
22 Supervisors in File No. 101357.

23 /

24 /

25 /

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPROVED:

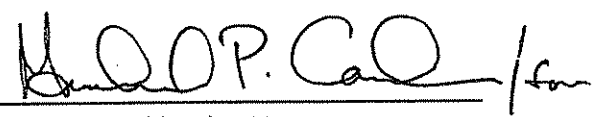
DENNIS J. HERRERA  
City Attorney



Noreen Ambrose  
Utilities General Counsel

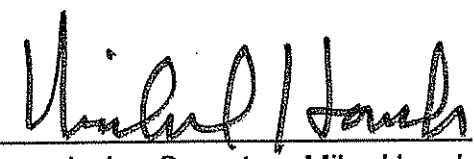
RECOMMENDED:

San Francisco Public Utilities Commission



Edward M. Harrington  
General Manager, Public Utilities  
Commission

AUTHORIZED BY SFPUC Resolution No.  
10-0176



Commission Secretary Mike Housh  
Public Utilities Commission



## SETTLEMENT and RELEASE AGREEMENT

This Settlement and Release Agreement ("**Agreement**") is made and entered into this 25<sup>th</sup> day of October 2010 by and between SKYLINE STABLES CORPORATION, a California corporation ("**Stables**"), and THE CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation ("**City**"), acting through its San Francisco Public Utilities Commission ("**SFPUC**") and San Francisco City Attorney Dennis J. Herrera.

### I. RECITALS

The parties enter into this Agreement with reference to the following facts and understandings:

A. Skyline Stables Corporation and the City entered into a lease agreement, dated November 15, 2005 ("**2005 Lease**"), with respect to approximately 13.2 acres of City-owned land located on a portion of the 55.63-acre tract of land known as the Harry Tracy Water Treatment Plant site in San Bruno, California ("**Lease Premises**"), for a 52-stall horse stabling facility.

B. On October 15, 2010, at a duly noticed special meeting of the SFPUC, the SFPUC adopted Resolution No. 10-0176, approving the Water System Improvement Program ("**WSIP**") Harry Tracy Water Treatment Plant – Long Term Improvement project ("**HTWTP Project**") to improve water delivery reliability and provide seismic upgrades with respect to the Harry Tracy Water Treatment Plant, which supplies water to the Peninsula and San Francisco.

C. Following approval of the HTWTP Project, Stables received a notice ("**Termination Notice**") from the SFPUC terminating that 2005 Lease in accordance with its terms, and requiring that the 2005 Lease Premises be vacated on or before November 30, 2010. In addition, since the approval of the HTWTP Project, in compliance with Government Code Section 7260 et seq., the San Francisco Charter, and all applicable laws, the SFPUC has made a written offer to Stables for the possible acquisition by City of all leasehold rights arising under the 2005 Lease.

D. By its Resolution No. 10-0176, the SFPUC also authorized SFPUC's General Manager ("**General Manager**") to negotiate and execute agreements with Skyline Stables Corporation, its shareholders, subtenants, and licensees, as necessary, to secure possession of the Lease Premises to expedite implementation of the HTWTP Project, subject to any required approval by City's Board of Supervisors (the "**Board**"); provided, however, any such agreements must be consistent with SFPUC plans and policies, in compliance with the Charter and all applicable laws, and in such form approved by the City Attorney.

E. The parties negotiated to resolve all potential claims and legal disputes arising out of the 2005 Lease and the approval and construction of the HTWTP Project, including, without limitation, all claims and disputes concerning the City's Planning Commission certification of the Final Environmental Impact Report ("**FEIR**") pursuant to the California Environmental Quality Act ("**CEQA**") for the HTWTP Project on October 14, 2010 by its Motion 18197, the SFPUC's approval of the HTWTP Project approval by its Resolution No. 10-

0176, the issuance of the Termination Notice and termination of the 2005 Lease, and the SFPUC's written offer to Stables for the possible acquisition by City of all leasehold rights arising under the 2005 Lease ("Disputes"). Authorized representatives of Stables, the SFPUC, and the City Attorney's Office executed this Agreement on October 25, 2010, subject to the understanding and agreement that this Agreement, and all terms herein, are contingent upon the Board, acting in its sole discretion, approving an ordinance authorizing the settlement, in addition to other conditions precedent to effectiveness of this Agreement, as described herein.

F. The parties desire to resolve the Disputes on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the facts recited above, and the covenants, conditions and promises contained herein, the parties agree as follows:

## II. AGREEMENT

1. **Conditions Precedent.** This Agreement shall take effect on the last date on which all of the following events have occurred, to be acknowledged promptly by the parties in writing ("Effective Date"):

(a) the San Francisco Board of Supervisors, acting in its sole discretion, ("Board") adopts legislation approving this Agreement, and the legislation becomes effective;

(b) the Planning Commission October 14, 2010 certification of the FEIR for the HTWTP Project is final, and any appeal of that determination to the Board has been rejected or withdrawn by all appellants;

(c) on or before November 30, 2010 or such later date that the General Manager determines at his sole discretion is consistent with the HTWTP Project schedule, as evidenced by written notice to Stables, Stables, its subtenants, licensees, and all other persons claiming any right to occupy the Lease Premises through or based upon Stables rights under the 2005 Lease (collectively, the "Stables Group") vacate the Lease Premises, such vacation to include the removal of all personal property; and

(d) City's Controller certifies the availability of funds appropriated for the HTWTP Project, as the source of the funding for the Settlement Amount under this Agreement, which can not occur unless the Board first (i) adopts a resolution approving the Final EIR for the HTWTP Project, adopting findings as required under CEQA, including the Mitigation Monitoring Program and statement of overriding considerations, and (ii) the Board Budget and Finance Committee releases the reserve placed on appropriations for WSIP projects with construction costs over \$100 million under Ordinance 092-10.

Until satisfaction of each of the foregoing conditions precedent, this Agreement shall have no force or effect.

2. **City's Due Diligence.** The SFPUC shall make a good faith effort and use all due diligence to obtain prompt consideration of this Agreement by all necessary approval authorities, including the Board and City's Controller.



3. **Payment to Stables, Rent Waived.** City shall cause to be delivered to Stables a cash payment in the amount of Six Hundred Fifty Thousand dollars (\$650,000) ("**Settlement Amount**") as soon as reasonably practicable after the Effective Date of this Agreement. The City shall make a good faith effort and use all due diligence to deliver payment of the Settlement Amount within ten (10) business days after the Effective Date. City will return Stables' security deposit under the 2005 Lease of Ten Thousand Dollars (\$10,000) upon vacation of the Lease Premises in compliance with this Agreement. City forgives Stables of its obligation to pay Rent, as defined in the 2005 Lease, from October 1, 2010 through November 30, 2010, or the remaining term of the 2005 Lease as established under this Agreement, in the total amount not to exceed five thousand dollars (\$ 5000.).

4. **Lease Termination and Vacation of Lease Premises.** The term of the 2005 Lease shall terminate at 9:00 PM on November 30, 2010 (the "**Termination Date**"). On or prior to the Termination Date, the Stables Group will vacate the Lease Premises and remove from the Lease Premises all personal property.

5. **Withdrawal of CEQA Appeal.** Stables shall take all necessary action to terminate and withdraw any appeal to the Board instituted or filed by or on behalf of any Stables Releasor (defined in Section 7(a) below) of the City's Planning Commission determination on the FEIR if the Board votes to adopt the ordinance authorizing this Agreement and the Mayor signs that ordinance.

6. **Representations, Warranties, and Indemnification.**

a. Each party represents and warrants to the other party that:

- i. to the extent applicable to such party, it is duly organized and existing and is in good standing in its state of formation;
- ii. it has the full right and authority to enter into this Agreement, enter into the other agreements and instruments contemplated by this Agreement to which it will be a party, and to undertake and consummate such party's obligations under this Agreement, including, without limitation, the lease termination, releases, indemnification, and other obligations and transactions contemplated by this Agreement;
- iii. the person or persons signatory to this Agreement and any document executed pursuant to this Agreement on behalf of such party have full power and authority to bind such party; and
- iv. upon due execution and delivery by the respective parties to this Agreement and each of the other agreements and instruments contemplated by this Agreement to which it will be a party, each of this Agreement and such other agreements and instruments to which it will be a party will be the valid, binding, and enforceable obligation of such party in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency,

reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

- b. Each party agrees to indemnify, protect, and defend the other party against and hold them harmless from any and all claims, liabilities, losses, damage, costs, and expenses, including all reasonable attorney fees, asserted against or suffered by them, or either of them, resulting from (i) any breach by such party of this Agreement or (ii) the inaccuracy or breach of any of the representations, warranties, and covenants made by such party pursuant to this Agreement.

7. **Releases.**

- a. **Release By Stables.** Stables, in its own capacity and on behalf of its officers, shareholders, employees, owners, successors, assigns, and any subtenants or licensees under or pursuant to the 2005 Lease (collectively, "Stables Releasor"), hereby fully and forever releases and discharges City, together with its elective and/or appointive boards, supervisors, commissioners, officers, agents, employees, consultants, and departments, including, without limitation, the San Francisco Public Utilities Commission ("City Releasees") from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses, and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, that have existed or may have existed, or that do exist, or that hereafter shall or may exist, and that arise out of or are in any way related to (collectively, "Stables Claims") (i) the 2005 Lease or any rights of any Stables Releasor arising out of or in connection with the 2005 Lease, (ii) any governmental approvals of the HTWTP Project or related actions and any and all permits with respect to the HTWTP Project, including without limitation any Stables Claims challenging the sufficiency of the FEIR or the legality or sufficiency of any other approvals granted for the HTWTP Project, (iii) the SFPUC offer to acquire the leasehold interest under the 2005 Lease and (iv) any of the transactions, occurrences, acts, or omissions related to the Disputes; provided, however, notwithstanding the foregoing, such release and discharge shall not extend to the rights of any Stables Releasor arising under the Entry Permit (defined in Section 10 below), this Agreement, or the Exclusive Negotiation Agreement dated October 25, 2010 ("ENA") entered into between Stables and the San Francisco Public Utilities Commission.
- b. **Release By SFPUC.** City, together with its elective and/or appointive boards, supervisors, commissioners, officers, agents, employees, consultants, and departments, including without limitation the San Francisco Public Utilities Commission (collectively, "City Releasor"), hereby fully and forever releases and discharges the Stables Releasor from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, that have existed or

may have existed, or that do exist, or that hereafter shall or may exist, and that arise out of or are in any way related to (collectively, "City Claims") (i) the 2005 Lease or any of City's rights arising out of or in connection with the 2005 Lease or (ii) any of the transactions, occurrences, acts or omissions related to the Disputes; provided, however, notwithstanding the foregoing, such release and discharge shall not release or discharge Stables from (x) any indemnity obligations arising under the 2005 Lease with respect to any demands, charges, claims, accounts, or causes of action (collectively, "Lease Claims") arising, or based upon, facts or circumstances existing prior to the Effective Date, or (y) any City claim or right to enforce its rights under this Agreement, the Entry Permit, or the ENA.

- c. Except as otherwise expressly stated in this Section 7, this Agreement will fully and finally settle all Stables Claims and all City Claims of any nature, including, without limitation both known and unknown causes of action that arose out of or in connection with the 2005 Lease, and it constitutes a mutual release with respect to the 2005 Lease.

8. **Non-Assignment of Claims or Settlement Amount.** Stables, on behalf of itself and each Stables Releasor represents and warrants that no Stables Releasor has assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurer) any interest in any Stables Claim or the Settlement Amount. Stables shall defend, indemnify, and hold harmless City Releasees, and each of them, from and against any loss, expense, liability, and from and against any and all liens, subrogation claims, and other rights that may be asserted by any person against the Settlement Amount, including without limitation reasonable attorney's fees, arising from any breach of the foregoing. Furthermore, in the event that City learns that any Stables Releasor has breached this warranty, City may, at its sole option, elect to rescind this Agreement and the ENA, in which case Stables shall immediately remit to City the Settlement Amount, plus interest accruing thereon at a rate of ten percent (10%) per year, compounded monthly, from the date of payment thereof.

9. **Waiver of Protections of C.C.P. § 1542.** Each party certifies that it has read Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Each party hereby waives application of Section 1542 of the Civil Code. Each party understands and acknowledges that, as a consequence of this waiver of Section 1542, even if either party should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to the Disputes, or any of them, neither party will be permitted to make any further claims against the other to recover for such loss, damages or injury. Each party acknowledges that it intends these consequences even as to claims that may

exist as of the date of this Agreement but which that party does not know exist, and which, if known, would materially affect that party's decision to execute this Agreement, regardless of whether the party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause. Stables acknowledges that this general release does not extend to Lease Claims and each party acknowledges that this general release does not extend to the other party's right to enforce its rights under the ENA, the Entry Agreement, or this Agreement.

10. **Entry Permit.** Following the Termination Date and vacation of the Lease Premises by Stables, SFPUC and Stables will execute an entry permit, in substantially the form of the attached Exhibit A ("**Entry Permit**"), to allow Stables, subject to and in coordination with SFPUC staff, and its contractors, to return between January 1, 2011 and February 20, 2011 to the Lease Premises to accomplish salvage of existing structures and equipment. The Entry Permit will require Stables to maintain insurance in effect, and assume indemnity obligations, similar to the requirements in the 2005 Lease, and as further agreed between the SFPUC and Stables.

11. **Exercise of Independent Judgment** Each party acknowledges that, in executing this Agreement, it is acting on its own, independent judgment informed by its legal counsel. Each party acknowledges having read this Agreement and having been advised by its attorney as to its meaning and effect. Each party acknowledges and warrants that its execution of this Agreement is free and voluntary.

12. **Entire Agreement.** Each party acknowledges that this Agreement contains and constitutes the entire agreement between the parties with respect to the Disputes. The terms of this Agreement are contractual and not a mere recital. Each party acknowledges that the other party has made no representations, express or implied, to induce that party to enter into this Agreement, other than as expressly set forth herein.

13. **No Admission.** No aspect of this Agreement or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by either party of liability, or wrongful actions, for any purpose.

14. **Severability.** If any of the provisions of this Agreement or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Agreement to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared and understood to be severable; provided, however, that should a court of competent jurisdiction hold that Stables is entitled to sue the City upon any of the Stables Claims, and should any Stables Releasor bring or join in such a suit, then Stables shall immediately remit to the City the Settlement Amount, plus interest thereon accruing at a rate of ten percent (10%) per year, compounded monthly, from the date of payment thereof.

15. **Attorney's Fees.** Each party understands and acknowledges that it shall bear its own legal expenses and costs incurred in connection with prosecuting or defending against any Disputes and any of the claims released hereby, provide, however, that if any person or entity brings or commences any action or proceeding on any claim released hereby or to enforce or interpret any provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to receive its reasonable attorney's fees and costs therein incurred from the party not

prevailing. For purposes of this Agreement, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

16. **Interpretation of Agreement.** For purposes of interpreting this Agreement, the parties hereto shall be deemed to have participated equally in its drafting. This Agreement and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

////

{Signatures on following page}

////

////

////

////

////

////

////

////

////

IN WITNESS WHEREOF, the parties hereto and their respective attorneys of record have approved and executed this Agreement on the dates specified below:

AGREEING AND RELEASING PARTIES:

CITY AND COUNTY OF SAN FRANCISCO

Dated: October 25, 2010

By: H. O. P. Co. / for  
Ed Harrington  
SFPUC General Manager

SKYLINE STABLES CORPORATION

Dated: October 25, 2010

By: Christine Hanson  
Name: Christine Hanson  
Its: President

APPROVED AS TO FORM

DENNIS HERRERA  
City Attorney

Dated: Oct. 25, 2010

By: Noreen Ambrose  
Noreen Ambrose  
Deputy City Attorney

APPROVED AS TO FORM

Attorney for Skyline Stables Corporation

Dated: October 25, 2010

By: Vanessa O. Wells  
Vanessa O. Wells  
Sedgwick Detert, Moran & Arnold LLP

## EXHIBIT A

### ENTRY PERMIT

#### PERMIT TO ENTER AND USE PROPERTY

This PERMIT TO ENTER (this "Permit"), dated as of \_\_\_\_\_, 2010, is made by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Public Utilities Commission ("PUC"), and SKYLINE STABLES CORPORATION, a California corporation ("Stables").

#### Recitals

A. City owns that certain real property consisting of approximately 13.2 acres of City-owned land located on a portion of the 55.63-acre tract of land known as the Harry Tracy Water Treatment Plant site in San Bruno, (the "City Property").

B. Pursuant to a Lease dated November 15, 2005 (the "Lease"), Stables leased the City Property. Stables vacated the City Property upon the termination of the Lease and the Lease term on November 30, 2010.

C. Stables needs to enter the City Property to remove or salvage (1) fences previously erected by or on behalf of Stables on the City Property and (2) nonstructural portions of the structures and equipment previously constructed or placed on the City Property by or on behalf of Stables during the Lease Term ("Stables Structures"), as more particularly described on the attached Exhibit A (the "Work"). Subject to City's prior, written authorization as stated in Exhibit A, Stables may perform further salvage of structural portions of Stables Structures ("Additional Work").

D. Stables and City desire to enter into this Permit to allow Stables to enter the City Property and perform the Work.

#### PERMIT

NOW, THEREFORE, in consideration of the foregoing covenants, promises, and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Stables and City agree as follows:

##### 1. ENTRY; PERMISSION TO ENTER

Stables and its agents, employees, contractors, subcontractors, representatives, and other persons designated by Stables, including their respective employees (collectively, its "Agents"), shall have reasonable access to the City Property to perform the Work and, if authorized, the Additional Work, subject to, and in accordance with, the terms and conditions of this Permit. Stables and its Agents shall have the right to conduct the Work and, if authorized, the Additional Work, provided that (a) such Work and Additional Work is conducted between 6:30 AM and 9:00 PM on any day during the term of this Permit or such other times agreed upon by the parties and (b) any Agent (other than Agents that are members or officers of Stables) shall be accompanied and supervised at all time while present on the City Property pursuant to this Permit by a member or officer of Stables. All such Work and, if authorized, the Additional Work shall be at no cost or expense to City. Stables shall conduct the Work and, if authorized,



the Additional Work so as to minimize, to the greatest extent possible, disruption at the City Property in a manner reasonably acceptable to the parties.

## 2. TERM OF PERMIT

The term of this Permit is temporary only and shall commence on January 1, 2011 and shall continue until the earlier of February 20, 2011 or the date Stables gives City notice of its earlier termination of this Permit.

## 3. COMPLIANCE WITH LAWS

Stables shall conduct and cause to be conducted all activities on the City Property allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity.

## 4. INDEMNITY

Stables shall indemnify, defend, and hold harmless City and the PUC and their respective supervisors, commissioners, officers, agents, employees, agents, consultants, and departments (collectively, "Indemnitees") from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "Losses"), arising directly out of activities under this Permit or breach thereof, including, without limitation, Losses resulting from (a) any discharge, release, dumping or placement of hazardous materials or toxic waste in or about the City Property caused by or allowed by Stables or its Agents during the term of the Permit; (b) any requirement of a any federal, state or local governmental agency or political subdivision related thereto with jurisdiction over the handling or disposal of any hazardous materials or toxic waste caused or allowed by Stables or its Agents during the term of this Permit; or (c) any breach of or failure to perform or observe any term, covenant, or agreement in this Permit to be performed or observed by Stables, including, but not limited to any violation of any federal, state or local laws, ordinances, regulations or policies presently in effect or enacted during the pendency of this Permit. These indemnities shall apply regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on any Indemnitee. The provisions of this section shall survive termination of this Permit with respect to any Losses arising out of the activities of Stables or its Agents on or about the City Property. In addition to Stables' obligation to indemnify the Indemnitees, Stables specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnitees from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false, or fraudulent. Stables' obligation to defend shall arise at the time such claim is tendered to Stables by any Indemnitee and shall continue at all times thereafter. Stables assumes the risk of damage to any structures, buildings, appurtenances or personal property left or brought onto the City Property. Stables assumes the risk of damage to any structures, buildings, appurtenances, equipment, or personal property left or brought onto the City Property.

## 5. REMOVAL OF EQUIPMENT AND REPAIR OF DAMAGE, COSTS

Upon completion of activities on or about the City Property, Stables shall remove all equipment and materials brought onto the City Property by or on behalf of Stables to perform the Work and, if authorized, the Additional Work. Any personal property or fixed improvements, inclusive of any structures, buildings, fences, or equipment, remaining on the City Property after the expiration or termination of this Permit shall become the property of City and neither Stables nor any of its members, officers, licensees, or other Agents shall have any further right or interest in any such property or improvements. If any City pipeline, utility, appurtenance, or other personal property on

or about the City Property is damaged by any of the activities conducted by Stables or its Agents pursuant to this Permit, Stables shall, at its sole cost, repair any and all such damage and restore the City Property to its previous condition. Stables shall bear all costs or expenses of any kind or nature in connection with the Work and, if authorized, the Additional Work, including, but not limited to, all costs of excavation, construction, operation, and property removal and shall keep the City Property free and clear of any mechanics' liens or other claims of lien arising out of or in any way connected with the Work and the Additional Work.

#### 6. CONDITION OF CITY PROPERTY

The City Property is accepted "as is" and entry upon the City Property by Stables and its Agents is an acknowledgment by Stables that all dangerous places and defects on City Property are known and are to be made secure and kept in a secure condition by Stables throughout the term of this Permit.

#### 7. NO INTERFERENCE WITH USE

1. STABLES SHALL NOT MATERIALLY INTERFERE WITH OR OBSTRUCT CITY'S USE OF THE CITY PROPERTY OR ITS CONDUCT OF NORMAL BUSINESS OPERATIONS THEREON. CITY HAS NO RESPONSIBILITY OR LIABILITY OF ANY KIND OR CHARACTER WITH RESPECT TO THE IDENTIFICATION OR LOCATION OF ANY UTILITIES THAT MAY BE LOCATED IN OR ON THE CITY PROPERTY. STABLES HAS THE SOLE RESPONSIBILITY TO LOCATE THE SAME AND PROTECT THE SAME FROM DAMAGE AT ALL TIMES WHILE STABLES OR ITS AGENTS ARE PRESENT ON THE CITY PROPERTY. STABLES SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO UTILITIES OR DAMAGES RESULTING FROM STABLES' ACTIVITIES PURSUANT TO THIS PERMIT.

#### 8. NO JOINT VENTURES OR PARTNERSHIP; NO AUTHORIZATION

This Permit does not create a partnership or joint venture between City or its PUC and Stables as to any activity conducted by Stables or its Agents on, in or relation to the City Property. This Permit does not constitute authorization or approval by City or its PUC of any activity conducted by Stables on, in, around, or relating to the City Property.

#### 9. INSURANCE

(a) During the term of this Permit, Stables shall at its own cost and expense either procure and maintain or, in the event Stables' Agents are present on or about the City Property for or on behalf of Stables, cause to be maintained in full force and effect, insurance in the following amounts and coverages:

(i) If Stables or any Stables Agent has employees that enter the City Property in connection with or pursuant to this Permit, Workers' Compensation, with Employers' Liability limits not less than \$1,000,000 for each accident.

(ii) Comprehensive General Liability Insurance with limits not less than \$1,000,000 for each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations, and \$1,000,000 General Annual Aggregate Limit (other than Products-Completed Operations). The Comprehensive General Liability Insurance provided shall cover any property damage or personal injury resulting from any drilling or excavation conducted as part of the Permitted Activities.

(iii) The Comprehensive General Liability policy shall be endorsed to provide the following:

(A) That City, the PUC, and their officers, agents, and employees are named as Additional Insureds; and

(B) That such policy constitutes primary insurance to any other insurance available to the Additional Insureds with respect to any claims arising out of this Permit and that insurance applies separately to each insured against whom claim is made or suit is brought.

(b) Prior to any entry on the City Property of a motorized vehicle driven by Stables or any of its Agents, Stables shall provide City with written proof of adequate (as reasonably determined by City) automobile liability insurance applicable to such vehicles and its driver(s) and an executed waiver of rights and assumption of risk relating to the operation of such vehicle on or about the City Property, each in a form reasonably acceptable to City.

(c) All policies and certificates shall be endorsed to provide that no cancellation, major change of coverage, or expiration shall become effective or occur until at least thirty (30) days after Stables or Stables' Agents, as the case may be, delivers and City receives advance written notice as provided in Section 10 of this Permit. Stables, upon notification of receipt by City of any such notice, shall forthwith file with City a certified copy of the required new or renewal policy or certificate for such policy. At the time of making any application for an extension of time, Stables shall submit evidence that the policies will be in effect during the requested additional period of time.

(d) If at any time during the term of this Permit, Stables or its Agents, as the case may be, fails to maintain the required insurance in full force and effect, all work under the Permit shall be discontinued immediately, and shall not resume until notice is received by City that the required insurance has been renewed to full force and effect for a period satisfactory to City. Failure to maintain the required insurance will be sufficient cause for immediate termination of the Permit notwithstanding the notice required under Section 4 of this Permit.

(e) Approval of insurance by City shall not relieve or decrease the liability of Stables or its Agents hereunder.

(f) Certificates of insurance, in form and with insurers satisfactory to City, evidencing all coverages above shall be furnished to City before commencement of any operations under this Permit, with complete copies of policies to be furnished promptly upon City request.

## 10. NOTICES

Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested, or nationally recognized overnight courier that guarantees next business day delivery and provides a receipt therefor, with postage prepaid, addressed as follows (or such other address as City or City may designate as its new address for such purpose by notice given to the other in accordance with this Section):

To City: Real Estate Services  
Public Utilities Commission  
1145 Market Street, 7th Floor  
San Francisco, California 94103  
Attn: Director

To Stables: Skyline Stables Corporation

PO Box 1084  
Millbrae, CA 94030  
Attn: Christine Hanson, President

Any correctly addressed notice sent by a means that affords the sender evidence of delivery, attempted delivery, or rejected delivery shall be deemed to have been given and received on the earliest of delivery, attempted delivery, or rejected delivery.

11. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. City acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

12. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

13. DISCLOSURE

City understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.) apply to this Permit and any and all records, information, and materials submitted to the City in connection with this Permit. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. City hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Permit.

14. CONFLICT OF INTEREST

Through its execution of this Permit, City acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and the provisions of Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if City becomes aware of any such fact during the term of this Permit, City shall immediately notify the PUC.

15. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this Permit, City acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

## 16. GENERAL PROVISIONS

(a) This Permit may be amended or modified only by a writing signed by PUC and City. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Permit. (c) Except as expressly provided to the contrary, all approvals, consents and determinations to be made by PUC hereunder may be made in the sole and absolute discretion of PUC. (d) This instrument (including the exhibit(s) hereto) contains the entire Permit between the parties and all prior written or oral negotiations, discussions, understandings and Permits are merged herein. (e) The sections and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence in all matters relating to this Permit. (g) This Permit shall be governed by California law and the City's Charter. (h) If either party commences an action against the other or a dispute arises under this Permit, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof and for purposes of the indemnifications set forth herein, reasonable attorneys' fees of City and its PUC shall be based on the fees regularly charged by private attorneys in San Francisco with comparable experience notwithstanding the PUC's use of its own attorneys. (i) Except as is otherwise specifically provided for in this Permit, invalidation of any provision of this Permit, or of its application to any person, by judgment or court order, shall not affect any other provision of this Permit or its application to any other person or circumstance, and the remaining portions of this Permit shall continue in full force and effect, unless enforcement of this Permit as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this Permit. (j) This Permit may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

{Signatures on following page}

In witness whereof, PUC and City have executed this Permit on the date set forth below, effective as of the date first set forth above.

STABLES

SKYLINE STABLES CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_

General Manager  
Public Utilities Commission

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**Permitted Work**

During the term of this Permit, Stables and/or its Agents may enter the City Property solely to accomplish the following tasks:

1. The removal and salvage of (a) fences previously erected by or on behalf of Stables on the City Property and (b) nonstructural portions of the structures (such as stable doors) and equipment previously constructed or placed on the City Property by or on behalf of Stables during the Lease Term.
2. No removal or salvage of structural components of any Stables Structures on the City Property will be undertaken without City's prior written authorization.

